



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 31, 1997

Ms. Sarah J. Murphy
Director of Finance
City of Portland
P.O. Drawer 1285
Portland, Texas 78374-1285

OR97-2419

Dear Ms. Murphy:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 110856.

The City of Portland (the "city") received an open records request for certain records pertaining to two lawsuits against the city. Specifically, the requestor seeks "the original petition filed, the original petition settlement and the current petition settlement." You inquire whether the city must release the requested documents. In accordance with section 552.301 of the Government Code, you have requested an open records decision from this office within ten business days of the city's receipt of the open records request. You have not, however, specifically raised any of the act's exceptions to required public disclosure listed in subchapter C of chapter 552 of the Government Code.

Section 552.301(a) of the Government Code provides in pertinent part:

A governmental body that receives a written request for information that it wishes to withhold from public disclosure and *that it considers to be within one of the exceptions under Subchapter C must ask for a decision from the attorney general about whether the information is within that exception* if there has not been a previous determination about whether the information falls within one of the exceptions. The governmental body must ask for the attorney general's decision *and state the exceptions that apply* within a reasonable time but not later than the 10th business day after the date of receiving the written request. [Emphasis added.]

Further, section 552.302 of the Government Code provides:

If a governmental body does not request an attorney general decision *as provided by Section 552.301(a)*, the information requested in writing is presumed to be public information.

The Open Records Act makes all information collected, assembled, or maintained by a governmental body in connection with the transaction of official business public information unless it is within a specified exception. Gov't Code § 552.002. The act places the burden on the governmental body to establish that an exception applies. The governmental body must determine and demonstrate the applicability of a claimed exception in accordance with the procedures set out in section 552.301 of the Government Code. See Attorney General Opinions H- 436, H-249 (1974), H-90 (1973); Open Records Decision Nos. 150 (1977), 125 (1976), 91 (1975) (all interpreting predecessor statute).

As noted above, you have not specifically raised any of the act's exceptions to required public disclosure. You note, however, that the settlement agreements contain a confidentiality clause requiring the parties to the agreement to keep the terms of the settlement confidential. It is not clear to this office that you intended by this to assert the applicability of section 552.101 of the Government Code, which protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Even if this office were to assume, *arguendo*, that such was the case, please note that information is not confidential under the Open Records Act simply because the party submitting the information anticipates or requests that it be kept confidential. The test for required public disclosure is twofold: whether the requested information is collected, assembled, or maintained by a governmental body, and, if so, whether the information falls within one of the specific exceptions to disclosure listed under subchapter C of Chapter 552. Open Records Decision No. 460 (1987) (interpreting predecessor statute). A governmental body cannot, through a contract or agreement, overrule or repeal provisions of the Open Records Act. Attorney General Opinion JM-672 (1987). See also *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

Consequently, unless the requested information falls within one of the act's exceptions to disclosure, it must be released, notwithstanding any contract between the city and a third party specifying otherwise. After reviewing the information at issue, this office could identify no confidential information that must otherwise be withheld from the requestor pursuant to section 552.101 of the Government Code.¹ We therefore conclude that, in accordance with section 552.302, the requested information is deemed public and must be released to the requestor in its entirety.

¹We also note that you have not provided this office any indication that the records at issue are subject to a court order requiring the records be kept confidential so as to invoke the protection of section 552.107(2) of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Vickie Prehoditch
Assistant Attorney General
Open Records Division

VDP/RWP/glg

Ref.: ID# 110856

Enclosures: Submitted documents

cc: Ms. Cyndi Wright
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(w/o enclosures)